

## REMARKS

### I. Introduction

In response to the Office Action dated June 6, 2006, and in conjunction with the Request for Continued Examination (RCE) submitted herewith, no claims have been canceled, amended or added. Claims 1-2, 17-18, 21-23 and 25-27 remain in the application. Re-examination and re-consideration of the application is requested.

### II. Prior Art Rejections

In paragraphs (4)-(5) of the Office Action, claims 1 and 17 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,308,164 (Nummeling). In paragraphs (6)-(7) of the Office Action, claims 2, 18, 21-23 and 25-27 were rejected under 35 U.S.C. §103(a) as being unpatentable over Nummeling in view of “BuildPoint.com Launches First Web-based Business-to-Business Solution For \$415 Billion Construction Materials Industry” (Dialog). In paragraph (8) of the Office Action, claims 23 and 27 were rejected under 35 U.S.C. §103(a) as being unpatentable over Nummeling in view of Dialog and further in view of U.S. Patent No. 6,928,396 (Thackston).

Applicant's attorney respectfully traverses these rejections.

Applicants' attorney submits herewith a Declaration under 37 C.F.R. §1.131 by inventor Larry Allen Wares to eliminate the Dialog reference as a prior art reference.

The Declaration sets forth evidence showing that the inventor conceived the invention prior to November 1, 1999, which is the publication date of the Dialog reference, and thereafter diligently reduced the invention to practice in this country as evidenced by the following:

(a) The inventor conceived the invention described in the above-identified patent application in this country prior to November 1, 1999, as evidenced by the United States Provisional Patent Application No. 60/178,825, filed on January 28, 2000, from which this application claims priority. United States Provisional Patent Application No. 60/178,825 describes the invention, and fully supports the claims in this application.

(b) Attachment E of United States Provisional Patent Application No. 60/178,825, comprises 12 pages entitled “Functional Specifications For: Bid Manager-Phase 1,” wherein pages 2-12 are annotated at the bottom with ‘Prepared by Larry Wares / March 30, 1999.’ This is the date that the inventor completed the document, which is prior to November 1, 1999. Thus, this document is evidence of the inventor's conception of the invention at least as early as March 30, 1999.

(c) Attachment F of United States Provisional Patent Application No. 60/178,825, comprises 57 pages entitled “Project Development and Manual,” wherein page 2 is dated July 5<sup>th</sup>, 1999 and pages 3-54 are annotated at the bottom

with "07/05/99." This is the date that Primix Solutions, Inc. completed the document, which is prior to November 1, 1999. This document reflects work that Primix Solutions, Inc. and logical-E performed at the inventor's direction regarding the requirements definition for the implementation of the present invention. Thus, this document is evidence of efforts toward reduction to practice of the invention from July 5, 1999.

(d) Attachment G of United States Provisional Patent Application No. 60/178,825, comprises 196 pages entitled "Buzzsaw Bid System," wherein page 2 is annotated with a creation date of "08/01/99" and updated dates through "10/28/99." These are the dates that eBuilt, Inc. initially created and then updated the document, which is prior to November 1, 1999. This document reflects work that eBuilt, Inc. performed at the inventor's direction regarding the functional specification and system design for the implementation of the present invention. Thus, this document is evidence of efforts toward reduction to practice of the invention from August 1, 1999 through at least October 28, 1999.

(e) Development of the invention proceeded on a continuous basis from March 30, 1999, which is prior to November 1, 1999, eventually culminating in the filing of the United States Provisional Patent Application No. 60/178,825 on January 28, 2000.

Consequently, Dialog is eliminated as a reference by the Declaration under 37 C.F.R. §1.131, thereby rendering claims 2, 18, 21-23 and 25-27 allowable.

Moreover, Applicant's attorney submits that the Nummelin reference alone does not teach nor suggest all the limitations of Applicant's independent claims 1 and 17.

The Office Action asserts that Nummelin teaches all the elements of independent claims 1 and 17, but ignores most of the limitations of claims 1 and 17 in making these rejections - namely the limitations included into independent claims 1 and 17 in the Applicant's previously submitted amendments. The Office Action then asserts that Nummelin and Dialog teaches all the elements of dependent claims 2, 18, 21-23, and 25-27, but refers to elements not present in claims 2, 18 and 22, but does refer to elements originally found in dependent claim 5, but now in independent claims 1 and 17 (with dependent claim 5 being canceled), and asserts that these elements can be found in the Dialog reference. The Office Action makes similar rejections of claims 21 and 25-26 by relying upon the Dialog reference in combination with Nummelin. Moreover, the discussion in the section of the Office Action entitled "Examiner's Response to Applicant's Remarks" indicates that the Office Action intended to reject claims 1 and 17 under 35 U.S.C. §103 on the basis of Nummelin and Dialog, in a manner similar to the rejections of claims 21 and 25, rather than under 35 U.S.C. §102 on the basis of Nummelin alone.

Consequently, it is respectfully asserted that the elimination of Dialog as a reference by the Declaration under 37 C.F.R. §1.131 also renders claims 1 and 17 allowable.

Thus, Applicant's attorney submits that independent claims 1, 17, 21 and 25 are now allowable over the references. Further, dependent claims 2, 18, 22-23 and 26-27, are submitted to be now allowable over the references in the same manner, because they are dependent on independent claims 1, 17, 21 and 25, respectively, and thus contain all the limitations of the independent claims. In addition, dependent claims 2, 18, 22-23 and 26-27 recite additional novel elements not shown by the references.

### III. Conclusion

In view of the above, it is submitted that this application is now in good order for allowance and such allowance is respectfully solicited. Should the Examiner believe minor matters still remain that can be resolved in a telephone interview, the Examiner is urged to call Applicant's undersigned attorney.

Respectfully submitted,

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